

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Thomas L. Smith,
Petitioner

v. Case No. 1:15-cv-333

Sheriff, Hamilton County
Justice Center,
Respondent

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed July 13, 2016 (Doc. 8).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Petitioner's petition for writ of habeas corpus is **DISMISSED** without prejudice to refile after petitioner has exhausted the available remedy of a delayed appeal to the Ohio Court of Appeals from the trial court's October 15, 2015 judgment entry of conviction and sentence in Case No. B-1305689.

A certificate of appealability will not issue because petitioner has not made a substantial showing that he has stated "viable claim[s] of the denial of a constitutional

right” or that the issues presented are “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253(c); Fed .R. App. P. 22(b).

This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore **DENIES** petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

Date: August 4, 2016

s/Sandra S. Beckwith
Sandra S. Beckwith, Senior Judge
United States District Court